LIBRARY
SUPREME COURT, U. S.

FILED
APR 21 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968
No. 1292

RICHARD ARTHUR DAVIS,

Petitioner,

vs.

STATE OF CALIFORNIA.

Petition for a Writ of Certiorari to the State of California After Order Denying Habeas Corpus by the Supreme Court of California.

RICHARD ARTHUR DAVIS,
Petitioner in Pro Se,

c/o WALTER L. KRONEBERGER, JR.,
Attorney at Law,

1436 Marcelina Avenue,
Torrance, California 90501.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 685-9790

SUBJECT INDEX

Page

Petition for a Writ of Certiorari to the State of California After Order Denying Habeas Corpus by the Supreme Court of California 1

Appendix A. Petition for Writ of Habeas Corpus Denied.

TABLE OF AUTHORITIES CITED

Case

Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774 2

Rules

Rules of the United States Supreme Court, Rule 19, 1.(a) 1

Statutes

California Constitution, Art. I, Sec. 13, cl. 6 2

United States Constitution, Fifth Amendment 2

United States Constitution, Fourteenth Amendment 2

IN THE

Supreme Court of the United States

October Term, 1968
No. .....

RICHARD ARTHUR DAVIS,

Petitioner,

vs.

STATE OF CALIFORNIA.

Petition for a Writ of Certiorari to the State of California After Order Denying Habeas Corpus by the Supreme Court of California.

To the Honorable Earl Warren, Chief Justice of the Supreme Court and to the Associate Justices; Greetings:

I.

The petitioner respectfully requests Certiorari after having had his Petition for a Writ of Habeas Corpus denied by the Supreme Court of the State of California.

II.

The denial was on 26 February 1969, and the post card notifying petitioner is attached hereto and incorporated herein as Appendix A. The denial came without a hearing or an *opinion,* or formal opposition.

III.

The *jurisdiction* of this court is sought under *U.S. Sup. Ct. Rule 19,* 1.(a), 28 U.S.C.A.

IV.

The Petition for Habeas Corpus will be set forth verbatim in Paragraph VII. Thus the Petition and Appendix A now constitute the entire record of the proceedings in Habeas sought to be reviewed and petitioner hereby so certifies.*

V.

The *question* presented is this:

WHEN THE GOVERNOR OF THE STATE GRANTS AN EXTRADITION HEARING, SHOULD THE DENIAL OF EXTRADITION BE IN HIS UNBRIDLED DISCRETION OR GUIDED BY FIXED RULES?

VI.

The *doctrine of due process, FEDERAL CONSTITUTION* Amendments V and XIV, *CALIFORNIA CONSTITUTION* Article I, sec. 13., cl. 6., should include or have engrafted the rules, the tests the standards by which all persons subjected to an extradition hearing are judged. The court should act. (*Jackson v. Denno* (1964) 378 U.S. 368 [84 S. Ct. 1774]) *Jackson* imposed procedure to protect the right to due process.

VII.

The *facts* alleged by petitioner to the Supreme Court of the State of California are reiterated here verbatim (except the numbering and the lettering) because they indicate why it is imperative that certiorari be granted.

---

*Certification by the Supreme Court of California is being mailed directly from San Francisco to Washington D.C. on 17 April, 1969.

The facts (again, exactly as alleged in California) are these and are hereby incorporated:

"This Petition of RICHARD ARTHUR DAVIS, made on his own behalf, for a Writ of Habeas Corpus, respectfully shows:

A.

That petitioner, RICHARD ARTHUR DAVIS, is technically and constructively imprisoned, detained, confined and restrained of his liberty by virtue of a Governor's Warrant for Extradition to the State of Virginia.

B.

That petitioner appeared in Division 40 of the Municipal Court of the Los Angeles Judicial District on a fugitive complaint in *The People of the State of California vs. Richard A. Davis* (LAMC No. A 231671) on 8 April 1968, whereupon he was released on his own recognizance.

C.

That petitioner heretofore filed a Petition for a Writ of Habeas Corpus in the Superior Court of the State of California for the County of Los Angeles, entitled *In the Matter of the Application of Richard Arthur Davis for a Writ of Habeas Corpus* (Cr. No. HC 137553) before the Honorable RICHARD SCHAUER in Department 100. The petition was denied at an Order to Show Cause hearing on the 30th day of October last.

D.

That, thereafter, petitioner filed a Petition for Writ of Habeas Corpus in the Court of Appeal

of the State of California, Second Appellate District, entitled *In the Matter of the Application of Richard Arthur Davis for a Writ of Habeas Corpus* (15872). The petition was denied without a hearing or an Order to Show Cause or a written opinion or comment by the honorable court. The sole communication from the court denying the writ is a postcard, attached hereto as EXHIBIT 'A' and incorporated herein.

E.

That petitioner was placed on bail of $1,000.00, first on 15 October 1968 by order of said Superior Court (Honorable George M. Dell, Acting Presiding Judge of the Criminal Courts) and then on 19 November 1968 by order of said Court of Appeal and petitioner remains free up to the time of the filing of this petition.

F.

That habeas corpus is sought to free the petitioner from the bonds and restrains of the Governor's Warrant to allow him to go about his business and enjoy his residence in the State of California.

G.

That said technical and constructive detention, confinement and restraint are illegal, and the petitioner is informed and believes and on that ground alleges that the illegality of same consists in this, to wit:

A. That an extradition hearing for the petitioner was held in the Governor's Office in Sacramento, California, on 18 July 1968, at which time

the petitioner presented evidence of an equitable nature that the petitioner is in critically ill health; that the charge against the petitioner in the demanding State is trivial (embezzlement of $159.00); and that, perhaps, the reason for the extradition is explained by civil creditors in the State of Virginia that are seeking to personally serve petitioner with civil process; and

B. That after said hearing, both the person hearing the matter for the Governor and the person representing the Attorney General suggested that the petitioner contact Virginia to offer any money demanded to see if that would not suffice in this particular case for the ends of justice and that a decision on the extradition would not be made until the result of hat inquiry was made known to them: The result was negative and was made known to the Governor's Office; and

C. That at said hearing the only reason given petitioner for honoring the request of Virginia was that Virginia asks California less frequently than California asks Virginia for extradition; and

D. That a communication dated 6 September 1968 informed petitioner that the extradition request of Virginia would serve the 'best interests of justice'; and

E. That said extradition hearing is unfair to petitioner and in violation of Due Process of Law under both the Federal Constitution, Amendments V and XIV, and the California Constitution, Article I, §13, Clause 6, because the Governor exercises unbridled discretion—discretion without limit, rule, or standard.

H.

That if the court decides in its discretion and wisdom to hold a hearing at a later time (or decides the petition should be denied and allows the petitioner a reasonable time to apply to another and different court) the petitioner should be allowed to remain at large on his own recognizance or the present bail because of his dire ill health (bronchiectasis [one hundred percent physically disabled]), his emaculate past record (no arrest whatsoever—for five years the petitioner served as a special agent for the Federal Bureau of Investigation), the fact that he resides here in California with his wife and four children, and that he has been faithful and punctual in attending court at each and every required appearance since April 1968.

I.

That no other petition for a writ of habeas corpus has been made by or on behalf of said petitioner in regard to this case, excepting only as expressly set forth herein; and in that regard petitioner alleges that the petition, which was denied in Department *100 and the petition which was denied by the Court of Appeal, set forth the specific grounds that are hereinabove detailed for the court. The facts contained in this petition (except for paragraph VII B) were by Stipulation deemed

---

*In the Superior Court petitioner asserted one other point in the petition; that the Governor of the demanding State had failed to certify the indictment as authentic. This point was conceded to be erroneous by petitioner at the Order to Show Cause.

received in evidence in the Order to Show Cause in the Superior Court and that the court stated as its reason for denying the petition that the court could not state as a matter of law that the facts alleged constituted a sufficient basis for the Governor to refuse extradition.

J.

That the petitioner is not being actually or constructively held or detained by virtue of any other complaint, presentment, warrant, indictment, or quarantine law, rule, illegality, arrest or order except only as herein stated.

K.

That petitioner is suffering irrevocable injury in being held and restrained by said Governor's Warrant and the impending threat of being turned over to the agent of the State of Virginia.

L.

That the granting of a writ of habeas corpus is his only plain, speedy, and adequate remedy under the law.

M.

That a copy of this petition has heretofore been served upon the Attorney General representing the Real Party in Interest; and the Presiding Judge of the Superior Court of Los Angeles, but not upon the agent of the demanding State because he is presently in the State of Virginia, where he will remain until such time as he is notified of a final adjudication in the courts.

N.

That Points and Authorities are attached hereto as EXHIBIT 'B' and incorporated herein by reference.

O.

That this petition essentially covers the entire history of this particular case enabling a court of competent jurisdiction a complete record upon which to predicate a just and equitable decision; however, on moment's notice petitioner will move to augment the record to include the shorthand notes taken on 18 July 1968 in the Governor's Office in Sacramento, California, to affirm for this court that, except for the Indictment in Virginia, all of the evidence received at the hearing was in petitioner's favor (with weight and substance) and that there was no evidence offered against petitioner.

WHEREFORE, your petitioner prays that a Writ of Habeas Corpus may be granted, directed to the Governor of the State of California and all concerned, commanding them to have the body of RICHARD ARTHUR DAVIS before this court at a time and place therein to be specified, to do and receive what shall then and there be considered by this court concerning said petition, together with this Writ; and that the said petitioner may be restored to his full and active liberty with the Governor's Warrant declared void; and meanwhile, that the petitioner be allowed to remain at large on bail or upon his own recognizance until a final determination on this petition (or a subsequent petition or appeal or other writ) is made; and that

the petitioner be granted such other and further relief as may be appropriate and just, including, but not limited to, having this petition deemed to be for prohibition or mandamus or both if such is thought to be the proper remedy.

Dated: 16 February 1969.

Respectfully Submitted,

/s/ Walter L. Kroneberger, Jr.
Walter L. Kroneberger, Jr.
Attorney for Petitioner

EXHIBIT 'A'

(The original Petition contains the postcard denying the Writ of Habeas Corpus in the Court of Appeal—without comment.)

EXHIBIT 'B'

POINTS AND AUTHORITIES

I

JURISDICTION

'The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. * * *'

California Constitution, Article VI, §10.

'The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension.'

California Constitution, Article I, §5.

'If the accused or his counsel wish to test the legality of the arrest the magistrate must fix a reasonable time within which to apply for habeas corpus * * * if the writ is denied or the accused is remanded to custody, the (*sic*) probable cause appears for an application to another court or judge, the order must fix a reasonable time to apply again. (P.C. 1550.1.)'

California Criminal Procedure, Witkin (1963), §57.

While District Court of Appeal has jurisdiction to issue writ of habeas corpus, it has discretion

to refuse to issue writ as exercise of original jurisdiction on ground that application has not previously been made in lower court.

Application of Hillery (1962) 202 Cal. App. 2d 293 (20 Cal. Rptr. 759).

'Every application for a writ of habeas corpus must be verified, and shall state whether any prior application or applications have been made for a writ in regard to the same detention or restraint complained of in the application, and if any such prior application or applications have been made the latter application must contain a brief statement of all proceedings had, or in any of them, and to and including the final order or orders made therein, or in any of them on appeal or otherwise.'

Penal Code §1475.

Parole does not render habeas corpus proceeding moot. 'Petitioner although not in direct custody is under restraint.'

In Re Jones (1962) 57 Cal2d 860 (372 P2d 310 (22 Cal.Rptr. 478, 479).

In Re Peterson (1958) 51 Cal.2d 177 (331 P2d 24) holds that habeas corpus is still an appropriate remedy even though the petitioner has been ordered released from custody after posting reasonable bail (overruling a whole line of California cases).

II
FACTS

The petitioner is contending, that though he appreciates the courtesy and cooperation of the Governor of California in extending a hearing to petitioner in July of last year, that the hearing is unfair and in part a sham, because there are no ascertainable standards or guidelines to present a prima facie case.

The petitioner introduced evidence at the hearing to show that he is in critically ill health, that the charge against the petitioner was trivial, and that civil creditors in Virginia are trying to get him back to Virginia to serve him with a lawsuit (in contravention of the spirit of the Uniform Extradition Act). No contradictory evidence was presented.

At the hearing the only reason given petitioner that he might have to be extradited is that California asks Virginia for extradition more often than they ask us.

III
ISSUE

DID THE GOVERNOR'S USE OF UNBRIDLED DISCRETION IN THE EXTRADITION HEARING IN SACRAMENTO VIOLATE ANY DICTATES OF THE DUE PROCESS CLAUSES OF OUR CONSTITUTIONS?

IV

ARGUMENT

THE GOVERNOR'S USE OF UNBRIDLED DISCRETION IN THE EXTRADITION HEARING IN SACRAMENTO VIOLATED THE LICTATES OF THE DUE PROCESS CLAUSES OF OUR CONSTITUTIONS.

It must be admitted that the Governor of this State can, by whim or caprice, grant or refuse extradition as he chooses. The petitioner contends that in a republican form of government, reasonable laws or guidelines should control his unbridled discretion.

The petitioner didn't really ask the superior court in the previous petition for habeas corpus to hold that at the hearing in Sacramento the petitioner had, as a matter of law, presented enough evidence to compel the Governor to refuse extradition, but on the contrary the petitioner asked that honorable court, as he does this one, to agree that the 'fair play and substantial justice' aspect of due process demands that the Governor literally announce the rules of the game or show us the rule of thumb or delineate an appropriate yardstick.

When Judge Arthur L. Alarcon of the Superior Court in Los Angeles was the former Governor Brown's 'clemency and extradition secretary', he lectured on the subject of extradition in San Francisco. His talk is recorded in *2nd Criminal Law Seminar* (1962) Cohn, Central Book Company, Inc., Brooklyn, New York. Judge Alarcon said that the Governor will grant extradition unless the papers are legally insufficient or 'unless there is a strong compelling reason why the Governor feels'

that he should not extradite. In the latter situation he gave three examples: first: the classic case of the now-model citizen, president of his PTA, discovered to be a fugitive after years and years in this state; second: a minor and isolated crime; and third: a so-called political crime.

Please remember that these are the observations of the man who at that time was actually making recommendations to the Governor. He didn't say whether or not he had ever recommended refusing extradition. He didn't say if there were any rules to follow to win your case.

The petitioner would like the court to remember the case* where the United States Supreme Court held that due process of law does not require a state to afford an appeal of a criminal judgment, yet where the state has a scheme for an appeal for its citizens, it is then a violation of due process not to allow an indigent person a transcript on appeal; thus, the petitioner respectfully suggests that while it may not be a violation of due process for the Governor to refuse everyone an extradition hearing, where there is such a scheme provided by his good office, a rule of thumb for a successful hearing should be presented forthrightly. Surely had a yardstick been available to the Governor's secretary in the petitioner's case, extradition would have been refused. All of the evidence presented was favorable to the petitioner. There were strong and compelling reasons presented to the Governor to refuse to extradite.

'It has long been the rule in this state that when discretionary power is conferred upon the

---

*_Griffin v. Illinois_ (1956) 351 U.S. 12 (76 S.Ct. 585).

courts "the discretion intended * * * is not a capricious or arbitrary discretion, but an impartial discretion guided and controlled in its exercise by fixed legal principals, it is not a mental discretion, to be exercised ex gratia, but a legal discretion, to be exercised in conformity with the spirit of the law, and in the manner to subserve and not to impede or defeat the ends of substantial justice."'

Ex Parte Cook (1944) 7 Cal.App.2d 20 (153 P2d 578, 580).

While the power to grant or deny an extradition hearing is a political question, surely the discretion must be exercised under 'fixed legal principles' as mentioned in *Cook* (Supra).

V

CONCLUSION

It is a farce, it is a waste of time and money, it is a violation of Due Process of Law to grant an extradition hearing, listen to all the evidence presented of every kind and character, as was done in this case, all the time knowing that you just can't stand the thought of saying 'no' to the State of Virginia. This premise violates the concept of 'ordered liberty', and the basic civil rights of the petitioner.

That a court can tell the Governor to get such a set of rules to comply with due process seems to be settled, though (*sic*) under the doctrine established in *Youngstown Sheet and Tube vs. Sawyer* (1952) 343 U.S. 579 (72 S.Ct. 863) (contra *Mississippi vs. Johnson,* 4 Wallace 475).

VERIFICATION

County of Los Angeles, State of California—ss.

I am the petitioner, RICHARD ARTHUR DAVIS, and I have read the foregoing PETITION FOR A WRIT OF HABEAS CORPUS and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on 16 February 1969 at Los Angeles, California.

/s/ Richard Arthur Davis
Richard Arthur Davis
Petitioner

SERVICE

WE, AND EACH OF US, hereby acknowledge having received a copy of the within PETITION FOR A WRIT OF HABEAS CORPUS this 19th day of February 1969 at Los Angeles, California.

Thomas C. Lynch
Attorney General
By: W. E. James
BTS
Hon. Charles A. Loring
Presiding Judge, Superior Court
Los Angeles County
By: .....

Received copy of within document this 19 day of Feb. 1969.

/s/ J. A. Warner/by B. Jolley
Presiding Judge"

Let the Writ issue.

RICHARD ARTHUR DAVIS,
Petitioner in Pro Se,
c/o WALTER L. KRONEBERGER, JR.,
Attorney at Law,

Verification.

COUNTY OF LOS ANGELES)
) ss.
STATE OF CALIFORNIA)

I am the petitioner in the within Petition for a Writ of Certiorari; I have read the foregoing and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I certify (or declare), under penalty of perjury that the foregoing is true and correct.

Executed on 15 April 1969 at Torrance, California.

RICHARD ARTHUR DAVIS

APPENDIX A.

Clerk's Office, Supreme Court, 4250 State Building.
San Francisco, California 94102

Feb. 26, 1969

Dear Sir: I have this day filed Order

PETITION FOR WRIT OF HABEAS CORPUS DENIED.

In re: Crim. No. 13155 Davis on Petition for Writ of Habeas Corpus.

Respectively,

William I. Sullivan
Clerk